IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9497 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GRAM PANCHAYAT OF KHAREDI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 9497 of 2002

MR SURESH M SHAH for Petitioner No. 1

MS KHYATI P HATHI for Respondent No. 1

MR PV HATHI for Respondent No. 1

MS SONAL VYAS, AGP for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/10/2002

ORAL JUDGEMENT

#. This petition is filed by the Gram Panchayat, Kharedi, which is already dissolved by the order of the Development Commissioner dated 25.7.2002, which is at page 48 in the compilation. By the aforesaid order, the Development Commissioner passed the order of dissolving Kharedi Gram Panchayat, as, the panchayat has failed to pass the budget within the stipulated time as

contemplated under section 116(3) of the Gujarat Panchayats Act, 1993. The newly elected body of Gram Panchayat, Kharedi took the charge recently and the first meeting was held on 16.1.2002. It is the case of the respondents that the said panchayat failed to pass the budget by 31.3.2002. However, according to the petitioner, the budget was already passed on 29.3.2002. However, the original place, where the meeting was to be held, was required to be changed, as, it was not possible to conduct the meeting in the office of the Gram Panchayat as the condition of the building of the panchayat office was not proper, and, accordingly, the place was changed, and, ultimately, on 29.3.2002 by way of Resolution NO.2, the budget was passed. But, the said decision was set aside by the Taluka Development Officer by resorting to the powers under section 249(1) of the Act. Subsequently, the petitioner panchayat was served with a notice dated 4.5.2002 to show cause as to why the panchayat should not be dissolved for not passing the budget within the stipulated time. Thereafter, the Development Commissioner heard both the parties, and, ultimately, by his order dated 25.7.2002 passed the order, dissolving the said panchayat under section 253 of the Act, by observing that since the panchayat has failed to pass the budget within the stipulated time and since it is mandatory to pass such budget by 31st March of the current year, the panchayat is required to be dissolved for not passing the budget within the stipulated time. The said decision is under challenge at the instance of Kharedi Gram Panchayat.

#. The present petition is affirmed by the then Sarpanch of Gram Panchayat, Kharedi. Though of course the said ex-sarpanch has not been joined in his individual capacity, in my view, it can be presumed that the petition is filed on behalf of the said ex-sarpanch also, who has sworn in the affidavit. The Development Commissioner, after considering the arguments of both the sides, came to the conclusion that, under the New Act of 1993, there is a mandatory provision for passing the budget for the current year. The Development Commissioner has not considered the judgment of this Court given in Special Civil Application No.6492 of 1997, which was given by this Court in the case of Luwara Gram Panchayat. In my view, when this Court has already taken a view that the said provision is not mandatory and since the said judgment is under the New Act of 1993, the Development Commissioner is bound to follow the said judgment. In a given case, even the proceedings can be taken against the officer, if it is found that, he has not followed the judgment of this Court, which may be

even considered as contempt of this Court. The Development Commissioner was bound to follow the judgment of this Court, and, it not open for him to find fault with the judgment of this Court by observing that, sub-clause (4) of Section 116 of the Act was not brought to the notice of this Court. Even otherwise also, in Special Civil Application No.6968 of 2002, I have already taken a view, after considering sub-clause (4) of section 116 of the Act, that the provision of passing the budget by 31st March, is not mandatory and discretion is still available with the State Government.

#. In view of the decision taken by me in the aforesaid judgment, this petition is required to be allowed. Since the Development Commissioner has not considered the matter on merits and has only decided the question about mandatory part of the provision, the matter is required to be sent back to the Development Commissioner for a fresh decision on merits. It is clarified that, on merits, the question, whether there was justification for not passing the budget within the stipulated time, is not examined by this Court, and, it is for the Development Commissioner to consider the merits of the case after hearing the petitioner and concerned parties.

#. This petition is accordingly allowed to the aforesaid extent. The impugned order of dissolving Kharedi Gram Panchayat and the consequential order, appointing the Administrator, are quashed and set aside. The matter is remanded to the Development Commissioner for taking a fresh decision. The Development Commissioner shall, thereafter, pass a fresh order after hearing the petitioner and after considering the material on record. Rule is made absolute accordingly with no order as to costs.

#. It is clarified that, till the Development Commissioner takes a fresh decision on merits and if no adverse order is passed against the petitioner in that proceedings, the elected body shall be entitled to continue to function.

(P.B.Majmudar,J)
(pathan)